UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

FRANKLIN GRULLON,	:	
	:	
Petitioner,	:	MEMORANDUM OPINION
	:	AND ORDER
– against –	:	
	:	99 Civ. 1877 (JFK)
UNITED STATES OF AMERICA,	:	
	:	
Respondent.	:	

JOHN F. KEENAN, United States District Judge:

By Memorandum Opinion and Order dated June 28, 2005, the Court denied Petitioner's pro se motion for reconsideration of the Court's January 16, 2001 and August 24, 2004 Orders. The former Order denied Petitioner's 28 U.S.C. § 2255 motion; the latter denied his Fed. R. Civ. P. 60(b) motion. Petitioner has filed a notice of appeal. The Court already has denied Petitioner a certificate of appealability ("COA") with respect to the § 2255 denial. See Grullon v. United States, 2001 WL 417080 (S.D.N.Y. Apr. 23, 2001). The Court presumes that Petitioner now seeks a COA from the Rule 60(b) denial. This is so because the COA prerequisite for appeals of § 2255 denials applies with equal force to Rule 60(b) denials. Kellogg v. Strack, 269 F.3d 100, 103 (2d Cir. 2001).

While the Court of Appeals has not spoken definitively on the issue, district courts in this circuit routinely deny COAs sua sponte. See, e.g., Muyet v. United States, 2005 WL 1337369 (S.D.N.Y. June 6, 2005) (Leisure, J.). As Judge Leisure noted in Muyet, the Fifth Circuit has approved such sua sponte denials.

See Alexander v. Johnson, 211 F.3d 895, 898 (5th Cir 2000). In determining whether to issue a COA, the Court analyzes whether the Petitioner has demonstrated "that jurists of reason could disagree with the district court's resolution of his constitutional claims or that jurists could conclude the issues presented are adequate to deserve encouragement to proceed further." Miller-El v. Cockrell, 537 U.S. 322, 327 (2003). The Court has reconsidered its rulings of August 24, 2004 (denying Petitioner's Rule 60(b) motion) and June 28, 2005 (denying reconsideration) and is satisfied that for the reasons stated therein, Petitioner cannot meet the Miller-El standard. He has not made a substantial showing of the denial of a constitutional right and is not entitled to a COA. See 28 U.S.C. § 2253(c)(2).

Accordingly, the Court declines to issue a COA from its August 24, 2004 and June 28, 2005 Orders.

SO ORDERED.

Dated: New York, New York
May 18, 2006

JOHN F. KEENAN
United States District Judge